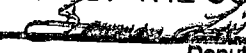


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FILED
Superior Court of California
County of San Francisco

DEC 31 2020

CLERK OF THE COURT

BY: 
Deputy Clerk

BOWMAN LIU

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO, UNLIMITED JURISDICTION

10
11 RICHARD CHAPMAN,

12 Plaintiff,

13 vs.

14 TENDERLOIN HOUSING CLINIC, INC.; 439
15 O'FARRELL STREET, LLC; and DOES 1 through
16 20, inclusive,

17 Defendants.
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25
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Case No. CGC -20-588793

COMPLAINT

1. Violation of San Francisco Administrative Code § 37.10 B
2. Violation of the Unruh Civil Rights Act California Civil Code § 51 et seq.
3. Breach of the Implied Warranty of Habitability
4. Breach of the Statutory Warranty of Habitability
5. Nuisance
6. Breach of the Covenant of Quiet Enjoyment
7. Negligence/Personal Injury
8. Negligent Violation of Statutory Duty
9. Intentional Infliction of Emotional Distress
10. Breach of Contract
11. Premises Liability
12. Unlawful Business Practices
13. Violation of Cal. Gov. Code §12927(c)(1)

JURY TRIAL DEMANDED

COMES NOW RICHARD CHAPMAN ("Plaintiff"), who alleges as follows:

PARTIES

1. Plaintiff Richard Chapman is a residential tenant at 445 O'Farrell Street, Unit 424, San Francisco, California, 94102 (the "Premises"). The Premises is located within 445 O'Farrell Street, San Francisco, CA 94102, a hundred unit building that is run as a residence hotel called the "Winton Hotel" and referred to herein as the "Property" or the "Winton." Plaintiff shares bathrooms and a common lobby/lounge and kitchen area with the other tenants of the Property but has a private room. Mr. Chapman has been a tenant at the Premises since approximately November 2007. Mr. Chapman believes he signed a written monthly rental agreement with a prior owner/ manager of the Property when he first became a tenant at the Property, but has no copy of any initiating tenancy document in his custody at present.

2. Plaintiff, who leases a residential unit at the Property, is a tenant within the definition of the San Francisco Residential Rent Ordinance.

3. Plaintiff qualifies as a "person who hires a dwelling" (i.e. tenant) as defined by California Civil Code Section 1940 and avails himself of all the rights, remedies and benefits contained therein.

4. By way of Plaintiff's long-term tenancy and regular monthly payment of rent, Plaintiff is also a common law tenant of the Property.

5. Plaintiff still resides in the Premises as a tenant pursuant to a monthly rental agreement with Defendants' predecessors in interest. Plaintiff's rent is \$650 per month.

6. Plaintiff is informed and believe, and thereupon allege, that Defendant 439 O'FARRELL STREET, LLC ("439 O'Farrell" or "Defendant Owner") is a California limited liability company headquartered at 402 8th Ave, Ste 207, San Francisco, CA 94118. 439 O'Farrell owns the Property and has owned the Property from March 2017 until present day (the "Relevant Period").

7. Plaintiff is informed and believes, and thereupon alleges, that Defendant TENDERLOIN HOUSING CLINIC, INC. ("THC" or "Defendant Manager") is a California Corporation authorized to

1 operate in the state of California and at all times relevant herein doing business in and headquartered at
2 San Francisco, California. According to its website, THC manages 23 residence hotels in San Francisco
3 and offers “safe, supportive housing.” THC provides “rental assistance and supportive services for
4 homeless individuals who have long-term disabilities resulting mainly from serious mental illness,
5 alcohol and drug use, or an HIV positive medical condition.” THC’s website also states, “In partnership
6 with the Human Services Agency, THC provides case management and supportive services to help
7 participants maintain stability in permanent housing.”

8 8. On information and belief, Plaintiff alleges that THC leased the Winton from Defendant Owner
9 or Defendant Owner’s predecessor in interest, (which were related entities) on or about December 2016
10 and shortly thereafter, assumed the responsibility for collecting Plaintiff’s rent on behalf of Defendant
11 Owner, and keeping the Property and Premises maintained in a safe and habitable condition and
12 providing Plaintiff with the quiet enjoyment of the Premises and Property. THC acted as property
13 manager for the Property from approximately December 2016 through the present day, and as such, were
14 agents of the owners of the Property and were therefore “landlords” of Premises as defined by Section
15 37.2(h) of the San Francisco Administrative Code.

16 9. The true names and capacities of Defendants sued herein as DOES 1 through 20, inclusive,
17 whether individual, corporate, associate, or otherwise, are unknown to Plaintiff who therefore sues such
18 Defendants by such fictitious names. When their true names and capacities are ascertained, Plaintiff will
19 amend this Complaint by asserting their true names and capacities herein. Plaintiff is informed and
20 believes, and thereon alleges, that each of the fictitiously named Defendants is responsible in some
21 manner for the occurrences herein alleged, and that Plaintiff’s damages as herein alleged were
22 proximately caused by those Defendants.

23 10. Plaintiff is informed and believes, and thereon alleges, that in doing the things herein alleged, the
24 Defendants, and each of them, including without limitation the DOE Defendants, were acting as the
25 agents, employees and/or principals of their co-defendants, and were generally acting within the course
26 and scope of their agency and employment.

11. Plaintiff is informed and believes, and thereon alleges, that at all times relevant herein, each employer of employees had advanced knowledge of the unfitness of the employee and employed them with conscious disregard of the rights or safety of Plaintiff and others and authorized and/or ratified the wrongful conduct and/or was personally guilty of oppression, fraud, or malice.

FACTUAL ALLEGATIONS

12. Plaintiff is an Air Force veteran who subsequently became permanently disabled. He is visually impaired as a result of hypertension and TIA strokes and in need of reasonable accommodations, including quiet surroundings, bathrooms maintained in sanitary conditions, a secure building, free of abusive neighbors, especially at night, exemption from THC's harassing "wellness checks," functioning elevator services, and access to the kitchen to prepare meals.

13. Plaintiff is informed and believes that all Defendants knew or should have known that they have a duty to maintain the Property in a legally habitable condition and failing that duty would cause the property to be rented in a condition beneath the habitability level required by law and would result in the damages that are the subject of this complaint.

14. During the Relevant Period, Plaintiff repeatedly notified THC both verbally and in writing of habitability and livability defects at the Premises and Property, including but not limited to: extremely dangerous and threatening conduct by THC clients that endanger the health and safety of Plaintiff and other Winton residents, rodent infestations, cockroach infestations, animal waste in the halls and bathrooms, lack of sufficient janitorial services, damaged bathroom doors and fixtures, inadequate electrical power, inadequate smoke alarms, water intrusion, defective heating, blocked emergency egress, defective plumbing, leaks into the lobby, chipped and peeling paint, overflowing garbage bins, lack of elevator service that severely impacts handicapped residents, and the utter lack of supervision of the high risk "clients" the THC houses at the Winton, resulting in theft, prostitution, drug dealing, assaults and batteries, trafficking in stolen bicycles and scooters, bomb threats, fires, non-residents gaining access to the Property at night because THC employees prop the door open, and tenants left deceased in their rooms for days at a time.

1 15. During the Relevant Period, all Defendants were aware that they were and are unable to provide
2 safe, habitable housing to Plaintiff that fulfilled Defendants' duty to Plaintiff to maintain the warranty of
3 habitability and covenant of quiet enjoyment. THC has abdicated its duty to supervise its clients, enforce
4 building rules, including its policy on visitors, security, quiet hours and assure that problem tenants do
5 not disturb Plaintiff and the other building residents. THC's demonstrable incompetence as a Property
6 Manager has destroyed Plaintiff's quiet enjoyment of the Premises.

7 16. Plaintiff was assaulted multiple times by his neighbor, who liked to scream and beat on his door
8 with a heavy metal object, often at night when he was sleeping. Plaintiff complained to THC about these
9 assaults (which were presumably captured on the surveillance video) but THC took many months to
10 move their client and prevent her from assaulting Plaintiff. Plaintiff lived in constant fear that he would
11 be attacked by his neighbor.

12 17. All Defendants were at all times aware that they, acting as managers and operators at the
13 property, had failed to maintain it to the standard of habitability as required by law and breached the
14 covenant of quiet enjoyment to Plaintiff. In addition to the foregoing substandard and defective
15 conditions, including rodent infestations, the Property lacked other necessary characteristics to be a
16 habitable dwelling.

17 18. Despite Plaintiff's continued requests, the defective conditions remain unabated.

18 19. Plaintiff did not cause or contribute to the substandard conditions described herein and had fulfilled
19 his obligations as a tenant at all times.

20 20. At all times relevant to this action, Defendants were aware that the Property was defective in that
21 it suffered from numerous habitability defects, including but not limited to: extremely dangerous and
22 threatening conduct by THC clients that endanger the health and safety of Plaintiff and other Winton
23 residents, rodent infestations, cockroach infestations, animal waste in the halls and bathrooms, lack of
24 sufficient janitorial services, damaged bathroom doors and fixtures, inadequate electrical power,
25 inadequate smoke alarms, water intrusion, defective heating, blocked emergency egress, defective
26 plumbing, leaks into the lobby, chipped and peeling paint, overflowing garbage bins, improper handling
of the mail, lack of elevator service that severely impacts handicapped residents, and the utter lack of

1 supervision of the high risk “clients” the THC houses at the Winton, resulting in theft, prostitution, drug
2 dealing, assaults and batteries, trafficking in stolen bicycles, bomb threats, fires, non-residents gaining
3 access to the Property at night because THC employees prop the door open, and tenants left deceased in
4 their rooms for days at a time.

5 21. In approximately fall of 2015 through November 2016, the Winton owners in conjunction with
6 Tipton Management Company, Inc., made a series of repairs to the building. Although the repairs were
7 done very cheaply using low quality materials, by 2016 the Property had been painted, a new fire
8 suppression system had been installed, many leaks were repaired, the elevator had been repaired, the
9 putrid carpeting had been replaced with cheap vinyl floor tiles, and the bathrooms had been redone. The
10 bedbugs, roaches and rodents had been suppressed to the point where longstanding violations from the
11 San Francisco Health Department and the Building Department were removed.

12 22. When THC assumed management of the Property, the building had been cleared of tenants except
13 for approximately 15 rooms, which were occupied by long term, rent-controlled tenants, of whom
14 Plaintiff was one.

15 23. Plaintiff estimates that from January 2017 to present, Defendant THC has had 25 different
16 building managers. THC inability to employ competent managers and employ staff is the main reason
17 that the Property is unsafe and uninhabitable. THC staff routinely ignore their duties and allow breaches
18 of building security, resulting in prostitution, drug dealing and scooter and bike “chop shops” occurring
19 at the Property. The way THC manages the Property is a disgrace.

20 24. There are many agencies in San Francisco that manage residence hotels that house the formerly
21 homeless with mental health and substance abuse issues that do not have this chronic and systematic lack
22 of supervision. To be clear, the state of the Winton complained of herein is not primarily due to the fact
23 that the THC houses the formerly homeless, it is due to THC’s incompetence and lack of supervision of
24 its clients at the Property.

25 25. THC receives government funding to house and support its “clients” at the Winton. As an unfair
26 business practice, THC does not provide the services it purports to provide to its at risk clients, while

1 being paid to do so. THC does not manage the Property in a way that remotely fulfills the warranty of
2 habitability or covenant of quiet enjoyment.

3 26. Once THC took over managing, things went quickly awry. There was a manager who supervised
4 the building reasonably well at the outset, while THC was gradually populating the near-empty Property.
5 After a few months, the manager left, the vacant rooms at the Property were filled with THC clients, and
6 a revolving cast of building managers began.

7 27. All Defendants were at all times fully aware that they, acting as managers and operators at the
8 property, had failed to maintain it to the standard of habitability as required by law.

9 28. Plaintiffs did not cause or contribute to the substandard conditions described herein and had
10 fulfilled their obligations as tenants at all times.

11 29. At all relevant times herein, numerous defective living conditions have existed, and continue to
12 exist throughout Plaintiff's tenancy. These defective conditions include, but are not limited to:

- 13 a. Poor maintenance of the Property resulting in rodent harborage;
- 14 b. Entry of rodents into the Property;
- 15 c. General dilapidation, deterioration, and inferior quality of fixtures throughout the Property;
- 16 d. Inadequate performance of necessary maintenance and/or rehabilitation;
- 17 e. Extreme excessive noise such as THC clients beating on walls and doors
- 18 f. Inadequate protection from certain THC clients' dangerous behavior;
- 19 g. Inadequate protection from fire hazards, including but not limited to nonfunctioning fire
alarms and lack of emergency egress;
- 20 h. Lack of smoke and carbon monoxide detectors;
- 21 i. Defective and inadequate plumbing;
- 22 j. Cracked and peeling exterior and interior paint;
- 23 k. Water intrusion;
- 24 l. Biological contamination;
- 25 m. Defective windows and doors;
- 26 n. Cockroach infestations;

- o. Bedbug infestations;
- p. Non-functioning elevator/lack of elevator service;
- q. Inadequate flooring;
- r. Failure to maintain bathrooms, garbage areas and common areas in a sanitary condition;
- s. Complete failure to enforce Covid health and safety regulations amongst THC's clients, such as wearing masks in the common areas;
- t. Failure to supervise THC clients and enforce building rules, resulting in Plaintiff's exposure to dangerous situations such as theft, prostitution, drug dealing, assaults and batteries, trafficking in stolen bicycles and scooters, bomb threats, fires, non-residents gaining access to the Property at night because THC employees *prop the door open for them*, and tenants left deceased in their rooms for days at a time.

30. Each Defendant had actual and constructive knowledge of these conditions at the respective Premises and the Property and failed to cure the conditions listed herein.

31. Throughout the Relevant Period, Plaintiff repeatedly notified all Defendants and/or their agents, of the defective and dangerous conditions listed above, among others, and requested that all Defendants have them repaired. Despite these requests, all Defendants, and each of them, failed and/or refused to repair the conditions, and/or have done so in a negligent and/or unreasonable fashion and in bad faith.

32. All Defendants exhibited wanton and blatant disregard of these unsanitary and uninhabitable conditions, as most were manifestly visible to the untrained observer.

33. In November 2020, Defendants restricted Plaintiff's use of the kitchen without a corresponding reduction in rent. A THC staff told Plaintiff that they did not have to grant Plaintiff access to the kitchen because he was not a THC client.

34. As a result of for Plaintiff complaining about THC clients' corpses remaining undiscovered in their rooms for several days, THC renewed its efforts to perform "wellness checks." THC would send staff to pound on the doors of the tenants, usually in the morning. However, Plaintiff is not a THC client but merely a long term rent controlled tenant of the Winton who never had to respond to "wellness checks" before. THC staff used this as an opportunity to harass Plaintiff. THC would make a

1 joke of disturbing Plaintiff with daily, often early morning "wellness checks." THC staff would pound
2 loudly on his door until he answered, or sometimes pound loudly on his door and run away laughing,
3 without waiting for Plaintiff to respond. Plaintiff offered to check in daily at the front desk and pointed
4 out that he was not a THC client and should not be subject to their oversight in this manner. Plaintiff
5 requested both verbally and in writing that the wellness checks stop, and requested this as a reasonable
6 accommodation to his disability. Plaintiff is a stroke survivor and suffers from high blood pressure,
7 migraines and insomnia, which is exacerbated by the extremely noisy environment maintained by the
8 THC during nighttime sleeping hours. THC has ignored his requests for reasonable accommodation.

9 35. THC has access to a video surveillance system in the halls and other common areas. Plaintiff
10 has made many complaints to Defendants such as: his THC client-neighbor is screaming and beating
11 on his door with a heavy metal object, or a THC client is setting a fire in the hall, or a THC client is
12 pulling the fire alarm without cause, or a THC client is passed out on drugs in the hall, or THC clients
13 are going on the fire escape or roof and using drugs, or a THC client is throwing heavy objects out of a
14 window to the street below. These acts can be observed and verified on the surveillance system but
15 THC is loathe to take any steps to correct this behavior or insure Plaintiff's safety.

16 36. Defendants' conduct is an attempt to force Plaintiff, who is a daily witness to THC's
17 mismanagement of the Property and its clients, to vacate his unit. If Plaintiff vacated, THC would be
18 able to place another client in his room and siphon off even more government funds without providing
19 the necessary services to its clients.

20 37. All Defendants did not perform their obligations under the rental agreement in ways that
21 include, but are not limited to the following:

- 22 a. Poor maintenance of the Property resulting in rodent harborage;
- 23 b. Entry of rodents into the Property;
- 24 c. General dilapidation, deterioration, and inferior quality of fixtures throughout the Property;
- 25 d. Inadequate performance of necessary maintenance and/or rehabilitation, including but not
26 limited to a failure to repair the bathrooms;
- e. Inadequate electrical amperage;

- f. Inadequate protection from THC clients' dangerous behavior;
- g. Inadequate protection from fire hazards, including but not limited to allowing THC client to possess dangerous gasoline and other flammable solvents in their rooms;
- h. Lack of smoke and carbon monoxide detectors;
- i. Defective and inadequate plumbing;
- j. Cracked and peeling exterior and interior paint;
- k. Water intrusion;
- l. Biological contamination;
- m. Defective windows and doors;
- n. Failure to maintain bathrooms, garbage areas and common areas in a sanitary condition;
- o. Syringes from iv drug use in the bathrooms and halls
- p. Inadequate temperature control of the steam heat.

38. As a direct and proximate result of the above acts by all Defendants, and each of them, Plaintiff paid excessive rent for the Premises during the Relevant Period.

39. As a direct and proximate result of the above mentioned conduct, Plaintiff has suffered and continues to suffer damages, all in an amount to be proven.

40. As a direct and proximate result of the above conduct, Plaintiff has suffered and continues to suffer reduced use of each Premises at the Property, attorney fees, and other special damages.

41. All Defendants engaged in the above-described conduct with the knowledge that the conduct was without right or justification and without regard for the fact that it would cause injury to Plaintiff, notwithstanding their obligation to comply with applicable ordinances and statutes providing for quiet possession and enjoyment of each Premises at the Property. Plaintiff is therefore entitled to punitive damages.

42. Plaintiff is informed and believes and thereon alleges that the actions of all Defendants as described above were done with oppression, fraud, and malice as defined in Civil Code § 3294. As such, Plaintiff should recover, in addition to actual damages, damages to make an example of and to punish Defendants.

1
2 **FIRST CAUSE OF ACTION**

3 **(Violation of San Francisco Administrative Code Chapter 37.10 B against all Defendants)**

4 43. Plaintiff re-alleges and incorporates all prior allegations as though fully set forth herein.

5 44. The acts described above constitute unlawful harassment under the San Francisco Administrative
6 Code section 37 et seq. (the "Rent Ordinance") as Defendants, in bad faith, refused to perform their
7 duties and obligations. Defendants' bad faith conduct includes, but is not limited to, Defendants' failure
8 to perform repairs in a timely and competent manner as described above, violate Rent Ordinance section
9 37.10B (a)(1)-(3), (10), (13) and (15). Defendant's violation included, but is not limited to, violation of
10 37.10B (a) (1), by acts that interrupt, terminate or fail to provide housing services required by contract or
11 by State, County or local housing, health or safety laws; violation of 37.10B (a) (2) by acts of failure to
12 perform repairs in a timely and competent manner; violations of Rent Ordinance section 37.10B (a) (3)
13 by acts of failure to undertake repairs with due diligence and exercise proper water intrusion remediation
14 protocols, as described above; by violation of Rent Ordinance section 37.10B (a) (10) by acts that
15 interfere with Plaintiffs' right to quiet use and enjoyment of a rental housing unit as that right is defined
16 by California law; by violation of Rent Ordinance section 37.10B (a) (13) by acts that interfere with
17 Plaintiffs' right to privacy; by violation of Rent Ordinance section 37.10B (a) (14)&(15) by engaging in
18 other repeated acts or omissions of such significance as to substantially interfere with or disturb the
19 comfort, repose, peace or quiet of Plaintiff who is lawfully entitled to occupancy of the Premises and that
20 caused, and were likely to cause, and/or were intended or are intended to cause any person lawfully
entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights
in relation to such occupancy.

21 45. Plaintiff notified Defendants of habitability and livability defects at the Property. Defendants
22 refused to effectuate any necessary repairs to the Premises or Property. Defendants' failure to repair the
23 outstanding habitability defects reported by Plaintiff were acts in bad faith, whereby the Defendants
24 knew of their contractual and legal obligation to provide safe, habitable housing and refused or failed to
25 do so. Such acts of Defendants, including but not limited to, their failure to address peeling paint, rodent
26 infestation, water intrusion and plumbing leaks, defective heating, were likely to cause or intended to

1 interfere with Plaintiff's quiet enjoyment of their respective rental units. Defendants' bad faith actions
2 included the failure to undertake repairs with due diligence and exercise proper remediation protocols,
3 and was an interruption of housing services required under law, including Civil Code Section 1941, et
4 seq., and Health & Safety Code sections 17920.3, 17975, et seq. Defendants also knew about their
5 obligation to comply with the San Francisco Rent Ordinance, including Rent Ordinance
6 §§37.10B(a)(2),(3),(9), and (14) but failed to do so.

7 46. As a direct, proximate, and foreseeable result of Defendants' actions, Plaintiff has suffered
8 general and special damages in an amount to be determined at trial, but in no event less than the
9 jurisdictional limits of this Court, and trebled pursuant to San Francisco Administrative Code section
10 37.10B(c)(5).

11 47. As a direct, proximate, and foreseeable result of Defendants' illegal actions done with
12 oppression, fraud and malice, Plaintiff has been denied the full use and enjoyment of the Premises and
13 suffered and continues to suffer considerable mental anguish, fear, anxiety and pain and has therefore
14 been damaged in an amount to be determined at trial and trebled according to statute.

15 48. In doing the acts alleged herein, Defendants have acted with oppression, fraud and malice;
16 therefore Plaintiff is entitled to punitive damages in an amount to be determined at trial.

17 49. Pursuant to Rent Ordinance section 37.10B(c)(5), Plaintiff is entitled to recover reasonable
18 attorney fees incurred in the prosecution of this action.

19 **SECOND CAUSE OF ACTION**
20 **(Violation of Unruh Civil Rights Act:**
21 **Discrimination Based on Disability)**

22 50. Plaintiff repeats and re-alleges all of the previous allegations herein by reference.

23 51. The actions and conduct of the Defendants constitute discrimination in violation of the Unruh
24 Civil Rights Act ("Unruh"), Civil Code §51 *et seq.* in that the unlawfully discriminated against Plaintiff,
25 by harassing and trying to oust him from his unit on the basis of disability, by depriving him of sleep and
26 security.

52. As a proximate cause of Defendants conduct, Plaintiff suffered and continue to suffer actual damages and general damages in the form of pain and suffering, physical injury, emotional distress, humiliation and embarrassment in an amount according to proof.

53. As a direct and proximate result of Defendants' conduct, Plaintiff is also entitled to attorneys fees as a matter of law under Unruh, Civil Code §52(a), in addition to treble damages, interest, expenses and costs of suit.

THIRD CAUSE OF ACTION
(Breach of the Implied Warranty of Habitability against all Defendants)

54. Plaintiff re-alleges and incorporates all prior allegations as though fully set forth herein.

55. At all relevant times herein, numerous defective living conditions have existed, and continue to exist throughout Plaintiff's tenancy at the Premises and Property. These defective conditions include, but are not limited to:

- a. Poor maintenance of the Property resulting in rodent harborage;
- b. Entry of rodents into the Property;
- c. General dilapidation, deterioration, and inferior quality of fixtures throughout the Property;
- d. Inadequate performance of necessary maintenance and/or rehabilitation;
- e. Extreme excessive noise such as THC clients beating on walls and doors
- f. Inadequate protection from THC clients' dangerous behavior;
- g. Inadequate protection from fire hazards, including but not limited to nonfunctioning fire alarms and lack of emergency egress;
- h. Lack of smoke and carbon monoxide detectors;
- i. Defective and inadequate plumbing;
- j. Cracked and peeling exterior and interior paint;
- k. Water intrusion;
- l. Biological contamination;
- m. Defective windows and doors;
- n. Cockroach infestations;

- o. Bedbug infestations;
- p. Non-functioning elevator/lack of elevator service;
- q. Inadequate flooring;
- r. Failure to maintain bathrooms, garbage areas and common areas in a sanitary condition;
- s. Complete failure to enforce Covid health and safety regulations amongst THC's clients, such as wearing masks in the common areas;
- t. Failure to supervise THC clients and enforce building rules, resulting in Plaintiff's exposure to dangerous situations such as theft, prostitution, drug dealing, assaults and batteries, trafficking in stolen bicycles and scooters, bomb threats, fires, non-residents gaining access to the Property at night because THC employees *prop the door open for them*, and tenants left deceased in their rooms for days at a time.

56. The defective conditions stated above constitute violations of state and local housing laws and pose severe health, safety, electrical, and fire hazards. The defective conditions materially affected Plaintiff's living conditions. State and local agencies, including but not limited to the San Francisco Fire Department, have cited the Defendants for unsafe conditions and violations of state and local law as described above.

57. Defendants had actual and constructive notice of each of the defective conditions described above at all relevant times herein. Despite such notice, Defendants failed to take the steps necessary to repair said conditions at all times relevant herein.

58. Plaintiff did nothing to cause, create or contribute to the existence of the defective conditions stated above.

59. By Defendants' breach of the warranty of habitability, Defendants breached a duty imposed on all residential landlords by state and local law. In failing to repair the defective conditions detailed above, Defendants acted unreasonably.

60. As a direct and proximate result of Defendants' breach, the Plaintiff has suffered, and continues to suffer pain, anxiety, annoyance, inconvenience, distress, economic loss, loss of use and property damage, all to his detriment in amounts to be determined at trial.

1 61. The conduct of Defendants' alleged above was deliberate, willful and malicious. Defendants
2 acted, or failed to act, deliberately and in conscious disregard of the rights and safety of the Plaintiff.
3 By reason thereof, Plaintiff is entitled to punitive damages in an amount to be determined at trial.
4

5 **FOURTH CAUSE OF ACTION**
(Breach of Statutory Warranty of Habitability against all Defendants)

6 62. Plaintiff re-alleges and incorporates all prior allegations as though fully set forth herein.

7 63. Defendants have violated statutes, including, among others, Civil Code Section 1941, *et seq.*,
8 and Health & Safety Code section 17920.3 related to the implied warranty of habitability.

9 64. Plaintiff repeatedly notified Defendants, both orally and in writing, of these unsanitary,
10 unhealthy, and defective conditions. Defendants failed and/or refused to repair these dangerous and
11 defective conditions within a reasonable time, or at all. Accordingly, Plaintiff is informed and believes,
12 and thereupon allege, that Defendants had actual and/or constructive notice of each of the defective
13 conditions described above at all relevant times herein. Despite such notice, Defendants failed to take
14 the steps necessary to repair said conditions at all times relevant herein.

15 65. Plaintiffs did nothing to cause, create or contribute to the existence of the defective conditions
16 stated above. Further, the Property as it exists in its defective and dangerous condition has no rental
17 value whatsoever as a result of its defective and dangerous condition.

18 66. As a direct and proximate result of Defendants' breach of the statutory warranty of habitability
19 and their failure to repair the defective and dangerous conditions or have them repaired within a
20 reasonable time or at all, Plaintiff has suffered, and continue to suffer pain, anxiety, annoyance,
21 inconvenience, distress, economic loss, loss of use and property damage, all to their detriment in
22 amounts to be determined at trial.

23 **FIFTH CAUSE OF ACTION**
(Nuisance against all Defendants)

24 67. Plaintiff re-alleges and incorporates all prior allegations as though fully set forth herein.

25 68. Plaintiff, by virtue of his rental of the Premises and his rental agreement, had at all relevant
26 times, a property interest in the Premises. Defendants' conduct in creating and maintaining a nuisance

1 in the manner described herein, was injurious to Plaintiff's health, offensive to Plaintiff's senses, and
2 interfered with Plaintiff's comfortable enjoyment of life, personal property, and Plaintiff's interest in
3 the Premises.

4 69. Defendants created and maintained the deficient conditions in the Property by failing to correct
5 or repair defective conditions. Defendants' conduct in maintaining the Premises and Property in a
6 hazardous, unhealthy and offensive state was grossly negligent and Defendants should have known that
7 regular upkeep would be required to maintain the habitability of the Premises.

8 70. As a direct, legal and foreseeable result of the conduct of Defendants, as set forth above,
9 Plaintiff suffered special and general damages as set forth herein.

10 71. The Defendants' conduct, as set forth herein, was grossly negligent and through reasonable and
11 necessary inspections it would have been readily apparent that the injury, discomfort, and annoyance
12 would unavoidably result to Plaintiff. Defendants therefore acted with willful and conscious disregard
13 for the rights and safety of Plaintiff. Defendants' conduct was also oppressive and despicable, and said
14 conduct constituted a cruel and unjust hardship upon Plaintiff. Therefore, Plaintiff requests substantial
15 punitive damages to be proven at trial.

16 **SIXTH CAUSE OF ACTION**
17 **(Breach of Covenant of Quiet Enjoyment against all Defendants)**

18 72. Plaintiff re-alleges and incorporates herein all prior allegations as though fully set forth herein.

19 73. By the acts and omissions described above, Defendants interfered with, interrupted, and
20 deprived Plaintiff of the full and beneficial use of the Premises and disturbed Plaintiff's peaceful
21 possession of the Premises.

22 74. These acts of interference, interruption, deprivation, and disturbance by Defendants amount to a
23 breach of the covenant of quiet enjoyment implied in all rental agreements, and codified in California
24 Civil Code section 1927.

25 75. As a direct and proximate result thereof, Plaintiff has suffered, and continue to suffer pain,
26 discomfort, annoyance, inconvenience, anxiety, economic loss, loss of use, and mental anguish, all to
his detriment in amounts to be determined at trial.

SEVENTH CAUSE OF ACTION
(Negligence as to all Defendants)

76. Plaintiff re-alleges and incorporates all prior allegations as though fully set forth herein.

77. By reason of the landlord-tenant relationship between Defendants and Plaintiff, Defendants, and their agents, owed Plaintiff a duty to exercise reasonable care in the ownership, management, inspection, and control of the Property, which included a statutory duty to comply with all applicable laws governing Plaintiff's rights as a tenant and all duties listed below. Defendants also owed a duty to exercise reasonable care in maintaining the Property and Premises free of defects and/or hazards and in inspecting the Property and Premises for same, so as to preclude any person, including Plaintiff, from unreasonable risk of harm. Defendants also owed a duty to warn Plaintiff of any potential and non-obvious hazards.

78. The duty to exercise reasonable care owed by Defendants, and each of them, to Plaintiff also included, but was not limited to the following duties: the duty to provide Plaintiff with legal, tenantable housing, fit for human occupancy; the duty to refrain from interfering with Plaintiff's full use and quiet enjoyment of the rented residence; and the duty to comply with all applicable state and local laws governing Plaintiff's rights as tenants.

79. Defendants, by the acts and omissions alleged herein, were negligent and careless and thereby breached said duties. Defendants also breached their duties to Plaintiff by failing to inspect the Property and Premises, to repair the Property and Premises properly, to maintain the Property and Premises free of defects, hazards, and unsanitary conditions.

80. As a direct and proximate result of these breaches of duty by Defendants, Plaintiff suffered actual and special damages as herein alleged.

81. As a direct and proximate result of these breaches of duty by Defendants, Plaintiff suffered personal injury, including multiple assaults by THC clients and exposure to toxic fumes created by THC clients.

82. The aforementioned duties breached by Defendants were breached with knowing and/or reckless disregard for Plaintiff's rights and/or safety and/or health and therefore justify an award of substantial exemplary and punitive damages in an amount to be proven at trial.

1
2 **EIGHTH CAUSE OF ACTION**
3 **(Negligent Violation of Statutory Duty all Defendants)**

4 83. Plaintiff re-alleges and incorporates all prior allegations as though fully set forth herein.

5 84. Defendants violated their duty of due care to Plaintiff and violated their statutory duties to
6 Plaintiff by violating certain housing, building and fire codes, local ordinances and state statutes,
7 including but not limited to: Civil Code Section 1941, *et seq.*, and Health & Safety Code section 17920.3,
8 17975, *et seq.*

9 85. At all times relevant, Plaintiff belonged to the class of persons for which these statutes were
10 designed to offer protection. The harm that has befallen Plaintiff is of the type these statutes were
11 designed to prevent.

12 86. As a proximate result of Defendants' negligent violation of statutory duty, as set forth above,
13 Plaintiff has suffered actual, special and general damages as set forth herein.

14 **NINTH CAUSE OF ACTION**
15 **(Intentional Infliction of Emotional Distress as against all Defendants)**

16 87. Plaintiff re-alleges and incorporates all prior allegations as though fully set forth herein.

17 88. The acts of Defendants, as heretofore alleged were extreme and outrageous and done with
18 conscious disregard for the rights of Plaintiff. Defendants knew that Plaintiff was susceptible to
19 additional discomfort as a result of the conduct described, knew that the conduct adversely affected,
20 had the wherewithal to avoid the conduct, yet consciously failed and refused to do so.

21 89. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered, and continue to
22 suffer severe mental and emotional distress, pain, and suffering, all to Plaintiff's general and punitive
23 damage, in an amount to be proven at trial.

24 **TENTH CAUSE OF ACTION**
25 **(Breach of Contract against 439 O'Farrell Street, LLC)**

26 90. Plaintiff re-alleges and incorporates all prior allegations as though fully set forth herein.

91. Defendant 439 O'Farrell Street, LLC failed to perform the terms and conditions of each
respective agreement by which they are bound. Defendants breached the agreement with Plaintiff by,

1 among other things, failing to provide a habitable and safe living environment; failing to maintain and
2 repair the Premises and Property; improperly repairing the Premises; preventing quiet enjoyment by
3 Plaintiff of the Premises; wrongfully demanding and collecting rent notwithstanding uninhabitable
4 conditions; and breaching the implied warranty of habitability and covenant of quiet enjoyment.

5 92. Plaintiff performed all duties, conditions and obligations that were required of them pursuant to
6 the terms of the rental agreement. The breaches of the rental agreement by Defendant herein alleged
7 are the direct and proximate cause of damages to Plaintiff as described herein. Plaintiff is also entitled
8 to reasonable attorneys fees and costs pursuant to Civil Code Sections 3304.

9
10 **ELEVENTH CAUSE OF ACTION**
(Premises Liability against all Defendants)

11 152. Plaintiff re-allege and incorporate all prior allegations as though fully set forth herein.

12 153. At all times relevant to this cause of action, Defendant and their agents owned, leased, occupied,
13 managed, or otherwise controlled the Property.

14 154. As landowners and managers of the Property, Defendants owed a duty of care under common law
15 and Civil Code section 1714 to exercise due care in the management of the Property so as to avoid
16 foreseeable injury to others. This duty required Defendants to comply with all building, fire, health and
17 safety codes, ordinances, regulations, and other laws applying to the maintenance and operation of rental
18 housing. Defendants allowed tenants who had committed arson, assault, or battery multiple times to
19 remain tenants at the Property without regard for the safety and well-being of Plaintiff.

20 155. Additionally, as owners, managers, and lessors of the Property, Defendants and their agents had a
21 duty under Civil Code section 1941 to maintain the Property in a condition fit for human occupation and
22 to repair all subsequent dilapidations thereof that rendered the Property untenable.

23 156. Defendants breached these common law and statutory duties by failing to correct substandard
24 conditions and maintain the Property in a sanitary condition. Defendants knew, or reasonably should
25 have known, that Plaintiff would be injured as a result of their breach of the common law and statutory
26 duties of care.

1 157. As a direct and proximate result of Defendants' negligent maintenance of the Premises, the value
2 of the leasehold held by Plaintiff was diminished. Consequently, Plaintiff was damaged in an amount
3 equal to the rental payments due and paid during Plaintiff's leasehold, or in an amount to be proven at
4 trial.

5 158. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered and/or continues to
6 suffer mental stress, emotional distress, anxiety, annoyance, and discomfort, and property damage, in an
7 amount to be proven at trial, but which amount is within the jurisdictional requirements of this Court.

8 159. Defendants' conduct in failing and refusing to maintain the property and supervise and support its
9 clients has been despicable, malicious, willful, knowing, cruel, unjust and oppressive, thereby entitling
10 Plaintiff to punitive damages in an amount to be proven at trial.

11 **TWELFTH CAUSE OF ACTION**
12 **(Unlawful Business Practices Against THC)**

13 160. Plaintiff re-alleges and incorporates all prior allegations as though fully set forth herein.

14 93. Plaintiff, in bringing this action, is suing as an individual but seeks injunctive relief on behalf of
15 the public at large.

16 94. By failing to comply with city, state and common law obligations relating to lessors of
17 residential premises, (including Civil Code Section 1941, *et seq.*, and Health & Safety Code section
18 17920.3, 17975, *et seq.*); failing to make thorough and timely repairs; and failing to maintain bathrooms,
19 garbage and common areas in a sanitary condition as alleged herein, and failing to enforce building
20 rules and insure the safety of Plaintiff by continuously exposing him to THC clients who had
21 committed assault, battery, vandalism, extreme and lengthy noise disturbances and arson at the
22 Property, Defendants have acted in contradiction to the law and are engaged in unfair and unlawful
23 business practices.

24 95. Plaintiff is informed and believe and thereupon allege that the acts of Defendants as described
25 herein, constitute an unlawful and unfair business practice and unfair competition in violation of
26 California Business and Professions Code, Sections 17200 *et seq.*

1 96. Plaintiff is informed and believe and thereupon allege that Defendants, as a pattern and practice
2 engage in such unlawful business practice as aforementioned, directly having effect upon other
3 members of the public to whom Defendants have legal obligations.

4 97. Defendants, as a pattern and practice, perform substandard maintenance at the Property. to cover
5 up habitability defects. Defendants, as a pattern and practice, do not provide the supportive services to
6 their clients that they are paid to implement by various governmental entities.

7 98. Plaintiff is informed and believes and thereupon alleges that Defendants have been unjustly
8 enriched by their violations of their legal obligations as landlords and lessors of residential property
9 and related provisions of the Business and Professions Code, which thereby justifies the award of
10 restitution in an amount to be proven at trial, including but not limited to attorney fees and injunctive
11 relief, enjoining Defendants from managing the Property and/or future unlawful or unfair business
12 practices.

13 **THIRTEENTH CAUSE OF ACTION**

14 **(Violation of Cal. Gov. Code §12927(c)(1):**

15 **Failure to Provide Reasonable Accommodations against Defendant THC)**

16 99. Plaintiff repeats and re-alleges all of the previous allegations herein by reference.

17 100. The Fair Employment and Housing Act ("FEHA") offers protection to tenants against the
18 unlawful practices of landlords by broadly prohibiting housing discrimination in the seeking, obtaining
19 and holding of housing based on sexual orientation and religion.

20 101. As set forth above, Defendants failed to make reasonable accommodations in housing rules,
21 policies, practices, or services where necessary to afford Plaintiff equal opportunity to use and enjoy a
22 dwelling. Cal. Gov. Code §12927(c)(1). THC refused to accommodate Plaintiff's insomnia by ceasing
23 morning "wellness checks" when Plaintiff had not slept, often due to THC's nuisance client living next
24 door to him. THC refused to accommodate his visual impairment, insomnia and hypertension, which is
25 exacerbated by stress, by relocating several nuisance tenants on his floor, including chiefly his next door
26 neighbor who would routinely assault him by brandishing heavy metal objects and beating on his door
with them, often late at night when he was trying to sleep.

102. By harassing Plaintiff based upon Plaintiff's disability, Defendant THC violated FEHA.

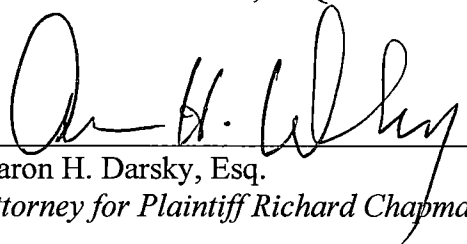
1 103. Plaintiff suffered damages arising out of this cause of action in an amount to be proved at trial.
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7 **WHEREFORE**, Plaintiff prays for judgment as follows:
8

- 9 1. For general damages according to proof;
10 2. For special damages according to proof;
11 3. For punitive damages allowed by law;
12 4. For restitution according to proof;
13 5. For attorney's fees allowed by law;
14 6. For the costs of suit;
15 7. For injunctive relief enjoining Defendant THC from managing the Property and/or
16 committing future unlawful or unfair business practices; and
17 8. For such other and further relief as the Court deems just and proper.
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26

Dated: December 31, 2020

AAARON DARSKY, ESQ.

By: 

Aaron H. Darsky, Esq.

Attorney for Plaintiff Richard Chapman

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Aaron H. Darsky (SBN 212229)
AARON DARSKY, ESQ.
345 Franklin St., San Francisco, CA 94102

TELEPHONE NO.: 415-515-4220

FAX NO. (Optional):

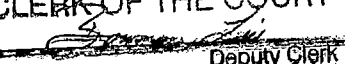
ATTORNEY FOR (Name): Plaintiff Richard Chapman

FOR COURT USE ONLY

FILED
Superior Court of California
County of San Francisco

DEC 31 2020

CLERK OF THE COURT

BY:  Deputy Clerk

BOWMAN LIU

CASE NUMBER: 000-20-588793

JUDGE:

DEPT.:

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

STREET ADDRESS: 400 McAllister

MAILING ADDRESS: 400 McAllister

CITY AND ZIP CODE: San Francisco, CA 94102

BRANCH NAME: Civil

CASE NAME:

Richard Chapman v. Tenderloin Housing Clinic, Inc. et al.

CIVIL CASE COVER SHEET

☒ **Unlimited**
(Amount
demanded
exceeds \$25,000)

☐ **Limited**
(Amount
demanded is
\$25,000)

Complex Case Designation

☐ Counter ☐ Joinder
Filed with first appearance by defendant
(Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

☐ Auto (22)
☐ Uninsured motorist (46)

**Other PI/PD/WD (Personal Injury/Property
Damage/Wrongful Death) Tort**

☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)

☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

☐ Wrongful termination (36)
☐ Other employment (15)

Contract

☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)

Other contract (37)

Real Property

☐ Eminent domain/Inverse
condemnation (14)
☐ Wrongful eviction (33)

☒ Other real property (26)

Unlawful Detainer

☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

**Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)**

☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the
above listed provisionally complex case
types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): 13

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 31, 2020

(TYPE OR PRINT NAME)

NOTICE

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2